

## **REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and these remarks.

Claims 1, 3, 5 – 7, and 12 are currently amended, essentially to address the examiner's stated concerns and otherwise to conform more closely with US PTO usage. No new matter is added.

These revisions add, change or delete claims in this application. A detailed listing is presented, with an appropriate defined status identifier, of all claims that are or were in the application, irrespective of whether the claim or claims remain under examination in the application. Upon entry of this amendment, claims 1-12 will be pending.

### **Claim Rejections – 35 USC § 112**

Claim 7 stand rejected as indefinite because, according to the examiner, it “is unclear from the claims and disclosure what is meant by ‘different measurement conditions’ ....” Without conceding the issue, applicant has chosen to expedite prosecution by deleting the contested phrase, “different measurement conditions,” thereby obviating the stated grounds for rejection.

### **Claim Rejections 35 USC § 102**

Claims 1-6 and 8-12 are rejected for alleged anticipation by Sugiuchi, U.S. patent No. 6,794,157. The examiner believes that “Sugiuchi teaches ... measuring cholesterol in low density lipoprotein (LDL) and total cholesterol in a biological sample, whereby cholesterol in LDL and total cholesterol in a biological sample are quantified with a single measurement.”

This is not what Sugiuchi teaches, however. Rather, the reference discloses two embodiments:

1. The “continuous fractional determination” of HDL cholesterol and LDL cholesterol within the same biological sample.

2. The “continuous fractional determination” of HDL cholesterol and total cholesterol within the same biological sample.

In sharp contrast, the present claims are directed to a method a method for determining **LDL** cholesterol and total cholesterol, not **HDL** and total cholesterol, within the same sample.

For this reason alone, the asserted case for anticipation fails, warranting withdrawal of the subject rejection. Additionally, the examiner erroneously attributes steps of the claimed assay to the assay taught by Sugiuchi. Compare, for example, present claims 5 and 6 to the examiner’s commentary on Sugiuchi’s invention on page 3, last paragraph through page 4 of the action.

More specifically, Sugiuchi teaches determining HDL cholesterol, in part by sequestering non-HDL particles. Yet applicant’s claimed assay does not involve sequestration. On the other hand, the claimed invention targets subsets of lipoprotein by using specific surfactants (see claims 5, 6, 11 and 12.)

According to the examiner, a method á la Sugiuchi, yielding the concentrations of HDL and LDL for a biological sample, necessarily could provide one with a total cholesterol value, simply based on the addition of the two concentration values. The examiner is incorrect in this supposition, however. Total cholesterol includes not only cholesterol in LDL and HDL but also VLDL and CM. Accordingly, the addition of the two values -- cholesterol in HDL and LDL -- does not provide the total cholesterol value.

For these reasons, withdrawal of the rejections over Sugiuchi is requested. Applicant also believes that the present application is otherwise in condition for allowance. Favorable reconsideration of the application as amended is requested, therefore.

The Examiner is invited to contact the undersigned by telephone if he feels that a telephone interview would advance prosecution. Furthermore, the Commissioner is authorized hereby to charge any additional fees which may be required regarding this application under 37 CFR §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or

informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, applicant hereby petitions for such extension under 37 CFR §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 30 June 2006

By

S. A. Bent

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5404  
Facsimile: (202) 672-5399

Stephen A. Bent  
Attorney for Applicant  
Registration No. 29,768